IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 14771 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PRATAPBHAI RATANBHAI RATHOD

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 14771 of 2004

MR PJ MALKAN for Petitioner No. 1

Ms. Rita Chandarana, AGP for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 12/01/2005

ORAL JUDGEMENT

Rule. Ms. Rita Chandarana, learned AGP waives service of Rule on behalf fo the respondents. With the consent of parties, the matter is taken up for Final Hearing today.

2. In this petition under Article 226 of the

Constitution of India the petitioner has challenged the legality and validity of the order passed by the Secretary, Revenue Department, State of Gujarat, dated 25th March 2004 in dismissing the REvision Application and confirming the order passed by the Collector, Ahmedabad, dated 30th September 1998 by which transfer of the property in question in favour of the petitioner has been cancelled. It appears from the record that the property in question was owned by one Vinodbhai Manilal Shah and others and the said property in question is in the area covered under the provisions fo the Gujarat Prohibition of Transfer of Immovable Property and Provision for Protection of Tenants from Eviction from Premises in Disturbed Areas Act, 1991 and therefore an application was submitted by the parties to grant them permission to sell the property in question to the petitioner. Pursuant to the order passed by the Collector dated 12th January 1994 a sale deed came to be executed on 17th January 1994.

2.1. On the basis of the proposal made by the Police Commissioner, Ahmedabad, dated 2.2.1998 as well as the proposal submitted by the City Survey Superintendent, Ahmedabad dated 5.6.1998 some enquiry was initiated and considering the report dated 2.2.98 submitted by the Police Commissioner, Ahmedabad and also the report dated 5.6.98 submitted by the City Survey Superintendent, Ahmedabad to the effect that the petitioner is nonexistent and no such person in the name of petitioner is residing at the said address and on coming to the conclusion that the said transaction is a Benami transaction in favour of a person who is not residing there, the Office of the Deputy Collector, more particularly the Deputy Collector, Mid-Day Scheme, AHmedabad passed the impugned order dated 30th September 1998 declaring the transaction in question dated 17th January 1994 as null and void. Being aggrieved and dissatisfied with the same the petitioner had preferred Appeal No. 2 of 1999 before the Special Secretary (Appeals), Revenue Department, State of GUjarat, which also came to be dismissed by judgment and order dated 25th March 2004 which has given rise to the present Special Civil Application under Article 226/227 of the Constitution of India.

3. Shri PJ Malkan, learned advocate appearing on behalf of the petitioner has submitted that apart from the fact that the allegation against the petitioner and the findings which are recorded by the authorities are not correct, the impugned order passed by the Collector, Ahmedabad 30th September 1998 is in breach of principles

of natural justice inasmuch as the impugned order came to be passed by the Collector, Ahmedabad relying upon the report submitted by the Police Commissioner, Ahmedabad as well as the report of the City Survey Superintendent, Ahmedabad, dated 2.2.98 and 5.6.98 respectively and copies of such reports are not given to the petitioner to meet with the same. Under the circumstances it is requested to allow the present Special Civil Application on that ground alone.

4. Ms. Rita Chandarana, learned AGP, has, however, tried to support the order passed by both the authorities below. She has submitted that inspite of the fact that attempts were made to find out the petitioner the petitioner was not found and relying upon the reports submitted by the Police Commissioner and the City Survey Superintendent, Ahmedabad, to the effect that no such person in the name of the petitioner is residing at the said address and that the transaction is made with a nonexistent person with a view to get out of the provisions of the abovesaid Act, and therefore requested to dismiss the present Special Civil Application.

5. Heard the learned advocates appearing on behalf of the parties. It is an admitted position that while passing the impugned order dated 30th September 1998 declaring the transaction in question as null and void under the aforesaid Act, the Collector, Ahmedabad, has relied upon the two reports, one dated 2.2.1998 submitted by the Police Commissioner, Ahmedabad, and the other dated 5.6.1998 submitted by the City Survey Superintendent, Ahmedabad, in support of his finding that no such person in the name of the petitioner is residing at the same address and the transaction in question is with a nonexistent person. It is also an admitted position that the petitioner is not given copies of the aforesaid reports to meet with the same and/or contradict the same. It is a settled proposition of law that when an authority relies upon certain documents and on that basis passes an order and copies of such reports are not supplied to the petitioner to meet with the same, the said order would be in breach of principles of natural justice. Considering the aforesaid facts and circumstances, the impugned order passed by the District Collector, Ahmedabad dated 30th September 1998 requires to be quashed and set aside as the same being in breach of the principles of natural justice, and consequently the order passed by the revisional authority is also required to be quashed and set aside. Miss. Chandarana has submitted that in fact the petitioner is not residing there he being not available it will not be possible for

the authority to even serve the notice upon the petitioner. In that view of the matter, Shri Malkan has submitted that the petitioner will appear before the Collector, Ahmedabad, who is the appropriate authority, at the first instance on 31st January 2005. On that date, the appropriate authority to supply the copies of the documents/reports relied upon by them to the petitioners and may give the next date of hearing after obtaining signature of the petitioner so that the question with regard to service of notice in future may not arise and after giving copies of the reports/documents, the respondents are directed to pass appropriate order in accordance with law and on merits and after giving proper opportunity to the petitioner.

6. For the reasons stated hereinabove, the impugned order passed by the Collector, Ahmedabad, dated 30th September 1998 as well as the order passed by the Secretary (Appeals), Revenue Department, dated 25th March 2004 in Appeal No. 2/1999 are quashed and set aside. The matter is remanded to the Collector, Ahmedabad for deciding the same in accordance with law and on merits

considering the observations made hereinabove. Rule is made absolute to the aforesaid extent with no order as to costs. D.S. is permitted.

[M.R. Shah, J.]

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